IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5708 OF 1991

Shri Dinkar Gunda Mulik .. Petitioner

versus

Sou.Anusaya Nivrutti Mulik .. Respondents

...

Mr.S.G. Surana for the petitioner.

Mr.M.R. Katikar for the respondent.

CORAM : D.G. KARNIK, J

DATED : 11th August 2004.

P.C:-

1. By this petition, the petitioner tenant challenges common judgement and order dated 12th November 1991 passed by the learned 9th Addl. District Judge, Pune allowing Civil Appeal No.405/98 dismissing Civil Revision Application no. 23 of

1988.

2. The respondent is an owner and landlord of the property consisting of one room admeasuring about 9’ x 10’ situated at Survey No.156 (part) Pimpri. (for short ’the suit property) and the petitioner is the tenant therein. According to the respondent, the agreed rent was Rs.50/- and the petitioner was in arrears of rent since the time of letting i.e.1st January 1978 till February 1983. Therefore, by a notice of demand dated 10th March 1983, the respondent demanded from the petitioner arrears of rent from 1st January 1978 to February 1983. On 30th March 1983 i.e. within a period of one month of the receipt of notice of demand, the petitioner filed an application bearing Miscellaneous Application no.253 of 1983 for fixation of the standard rent. The petitioner contended that the agreed rent was only Rs.25/- and not Rs.50/- and in any event, the standard rent of the suit premises would be Rs.25/-. Along with the Miscellaneous Application, the petitioner also made an interim application for fixation of an interim rent. By an order dated 4th April 1983, the Small Causes Court, Pune fixed the interim rent of the suit premises at Rs.30/- per

month and directed the petitioner to pay arrears of rent at that rate within a period of one month and continue to pay monthly rent on or before 10th day of each month. On 19th April 1983, i.e. within a period of one months, the petitioner deposited Rs.1,890/- in the trial Court together with arrears of rent from 1st January 1978 to 31st April 1983. The petitioner also continued to deposit the future rent month to month.

3. On 18th April 1983, the respondent filed a suit bearing regular Civil Suit no.800/83 for possession on the grounds i) default ii) bonafide requirement, iii) nuisance and annoyance and iv) damage to the suit premises. The respondents suit and the petitioners application for standard rent were heard together and by a judgement and order dated 24th February 1986, the learned Small Causes Judge dismissed the respondent’s suit and also fixed the standard rent of the suit premises at Rs.50/- per month. During the pendency of the suit and the standard rent application, the petitioner continued to deposit the interim rent fixed at Rs.30/- per month regularly except on two occasions. The rent

for the month of May 1983 was deposited in June 1983. The explanation given by the petitioner that during the month of May 1983, the Court was closed for summer vacation and the Nazir did not accept the rent, was accepted by the trial Court. The rent for the month of October 1983 was deposited one day too late on 11th October 1983. 10th October 1983 was found to be a Sunday and therefore the deposit was made on 11th October 1983 was held to be proper by the trial Court. The trial Court held that the petitioner had deposited the arrears of rent within a period of one month and thereafter had continued to deposit the rent regularly as per the order of the Court. In Mohan Laxman Hede Vs. Noormohamed Adam Shaikh reported in AIR 1988 SC 1111, a three Judge Bench of the Supreme Court has explained the earlier judgment of the two Judge Bench in the case of Mranilini B. Shah Vs. Bapalal Mohanlal Shah reported in AIR 1980 SC 954. In Mohan Hede's case, the Supreme Court has held that in order to claim protection under section 12(3)(b) of the Bombay Rent and Lodging Houses Rates Control Act, 1947 (for short 'the Act') the tenant is required to deposit the rent in the Court regularly but the word 'regularly' does not mean arithmetic punctuality. In the present

case, it was noticed by the trial Court that the petitioner had deposited the rent in the Court with almost an arithmetic punctuality except on two occasions which were properly explained. Therefore, in my opinion, the trial Court was right in dismissing the suit of the respondent on the ground of default. The trial Court also dismissed the suit of the petitioner on the remaining three grounds.

4. On the application for standard rent filed by the petitioner, the trial Court held that the standard rent of the suit premises was Rs.50/-. It however, did not pass any direction directing the petitioner to deposit the difference between the standard rent of Rs.50/- and interim rent of Rs.30/- which was fixed earlier. Being aggrived by the judgement of the trial Court fixing the standard rent at Rs.50/- per month, the petitioner filed a Revision Application bearing Civil Revision Application no.23 of 1988 in the District Court, Pune. Being aggrieved by the dismissal of a suit for possession, the respondent filed an appeal bearing Civil Appeal No.405 of 1988 in the District Court, Pune. The Civil Appeal filed by the respondent and the Revision

Application filed by the petitioner were heard together and disposed of by a common judgement dated 12th November 1991. The appellate Court held that the respondent had not proved that he required the suit premises reasonably and bonafide for the purpose of his own occupation. It also held that the petitioner was not guilty of a conduct amounting to nuisance and annoyance. It held that the standard rent was Rs.50/- and the petitioner was a defaulter and passed a decree for possession. That judgement is impugned in this petition.

5. The learned counsel for the petitioner invited my attention to a chart given in paragraph no.viii of the Writ Petition showing the dates of deposit of the rent by the petitioner in the trial Court. The Chart shows that the petitioner had deposited the rent regularly. Except on the two occasions the rent has been deposited on time and the delay on the two occasions has also been properly explained and accepted by the trial Court. The appellate Court has also accepted that the rent was deposited by the petitioner in the trial Court regularly. The learned counsel for the petitioner

also invited my attention to a chart showing the the dates of payment of rent during the pendency of the appeal, given in paragraph no.(xii) of the Writ Petition. The said chart also shows that during the pendency of the appeal, the petitioner has deposited the rent regularly at the rate of Rs.52.50 per month and there has not been a single default nor delay in the payment of rent. The appellate Court however held that the petitioner had not deposited the difference between the standard rent fixed by the Court i.e. Rs.50/- and the interim rent of Rs.30/- immediately after the decision of the trial Court. Therefore, the appellate Court held that the petitioner was a defaulter in payment of the rent and has passed a decree for possession.

6. It must be noted that at the time of the decision of the suit and the standard rent application fixing the standard rent at Rs.50/-, the trial Court had not issued any direction to the petitioner to deposit the difference between the standard rent and the interim rent. The learned counsel for the petitioner also invites my attention to the appeal memo which was filed by the respondent in the District Court. The grounds of appeal show

that the petitioner had challenged the decision of the Small Causes Court dismissing the suit on the ground of bonafide requirement and on the ground of nuisance and annoyance. No ground raised in the appeal memo that the judgement of the trial Court on the ground of default was erroneous, and the decision of the trial Court dismissing the suit on the ground of default was not challenged or appealed. When the appeal was argued and the point of default was sought to be pressed, the learned counsel for the petitioner objected and also made written application to that effect (Exhibit 21 in appeal) The appellate Court rejected the said application and passed a decree for possession on the ground of default. It is clear that the appellate Court had not given a proper opportunity to the petitioner to meet the ground of default which was not raised in the appeal memo. In my view, the appellate Court ought not to have allowed the respondent to raise the ground of default. Even otherwise, as stated earlier, there was no direction of the Court to deposit the difference between the standard rent fixed and the interim rent fixed earlier. The petitioner therefore, had complied with the direction passed by Court under clause (b) of sub section (3) of section

12 of the Act by depositing the interim rent in the trial Court regularly and by depositing the standard rent in the appellate Court regularly.

8. In the circumstances, the judgement of the appellate Court cannot be sustained. Petition is accordingly allowed and rule is made absolute.

9. In the facts and circumstances of the case, parties shall bear and pay their own costs.

D.G. KARNIK, J